



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2003

Ms. Sharon Hicks  
City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604

OR2003-6762A

Dear Ms. Hicks:

This office issued Open Records Letter No. 2003-6762 (2003) on September 25, 2003. In that ruling, we found that the City of Abilene (the "city") had failed to request a decision from this office within the ten-business-day time period prescribed by section 552.301(b) of the Government Code. Consequently, we concluded that the city had waived its claimed exception to disclosure under section 552.108. The city has since provided information indicating that, in fact, the city did submit its request for a ruling within the ten-business-day deadline prescribed by section 552.301(b). Based on the information that the city has provided, we have determined that an error was made in the previous ruling. When this office determines that an error was made in the decisional process under sections 552.301 and 552.306, and that the error resulted in an incorrect decision, we will correct the previously issued ruling. Therefore, this ruling serves as the correct decision and is a substitute for the ruling issued on September 25, 2003.

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188282

The City of Abilene (the "city") received a request for the following information: (1) incident/case and call sheet information relating to a named individual and a specified address during a stated time interval and (2) information relating to calls by another named individual. You indicate that the city will make some of the responsive information available to the requestor. You have submitted two responsive police reports that the city seeks to withhold under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. See Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information submitted as Exhibit B1 relates to an active investigation and likely prosecution. Based on your representation, we conclude that section 552.108(a)(1) is applicable to Exhibit B1. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure under section 552.108(a)(2) if the information “deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. You inform us that the information submitted as Exhibit B2 relates to a domestic disturbance that did not result in a conviction or a deferred adjudication. Based on this representation, we agree that section 552.108(a)(2) is applicable to Exhibit B2.

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information with regard to Exhibits B1 and B2, including detailed descriptions of the alleged offenses, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city may withhold the rest of the submitted information under section 552.108 of the Government Code. We note that the city has discretion under section 552.108 to release additional information that is not otherwise confidential by law. See Gov’t Code § 552.007; Open Records Decision No. 177 (1977) (statutory predecessor to Gov’t Code § 552.108 did not prohibit release of information).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

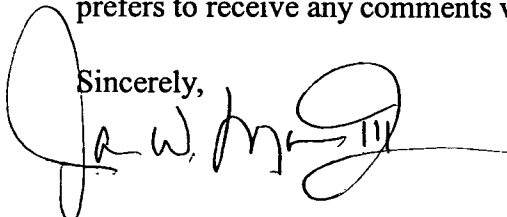
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W Morris III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 191992

c: Ms. Louisa Silva  
2401 Shelton  
Abilene, Texas 79603  
(w/o enclosures)